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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/510,782 02/23/00 KRYSIK

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EXAMINER

NGUYEN, S

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 09/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/510,782

Applicant(s)

KRYSIAK ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. **Claim 8** is rejected under 35 U.S.C. 102(e) as being anticipated by Spittle (US 5,916,027 on form PTO-1449). Spittle discloses a mulch product comprising NPK fortifiers and paper fibers.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-6, 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spittle (US 5,916,027 on form PTO-1449) in view of Morgan (US 6,029,395).

For claims 1,3,6,8, Spittle discloses a method for creating mulch comprising the steps of adding paper fibers to a mixer; adding NPK fortifiers before the mixer; drying contents of the mixer (see col. 3, lines 18-30). However, Spittle is silent about using a pin mixer or a paddle mixer, and a binding agent. It would have been an obvious matter

of choice to one having ordinary skill in the art at the time the invention was made to use any type of mixer such as a pin mixer or a paddle mixer to mix the mulch of Spittle depending on cost and how well one wishes to blend the mulch mixture together for his/her intended use. Morgan teaches a mulch making method in which he employs a binding agent in his mulch mix to hold other elements, such as paper fibers and granules, in the mix together. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a binding agent as taught by Morgan in the mulch mix of Spittle to hold elements in the mix together.

For claim 2, Spittle as modified by Morgan (with emphasis on Spittle) disclose the mulch mix are pelletized into pellets (see Spittle, col. 3, line 21) but are silent about using a pan pelletizer. It would have been an obvious matter of choice to one having ordinary skill in the art at the time the invention was made to use any type of pelletizer such as a pan pelletizer to create the pellets of Spittle as modified by Morgan depending on cost and the pellet size one wishes for his/her intended use.

For claim 4, Spittle as modified by Morgan (with emphasis on Spittle) disclose the pellets are then granulated into flakes by using known granulation equipment (see Spittle col. 3, line 30) but are silent about using a drum granulator. It would have been an obvious matter of choice to one having ordinary skill in the art at the time the invention was made to use any type of granulation equipment such as a drum granulator to create the flakes of Spittle as modified by Morgan depending on cost and the flakes size one wishes for his/her intended use.

For claim 5, Spittle as modified by Morgan are silent about employing a pin mixer having a double helix pin arrangement. It would have been an obvious matter of choice to one having ordinary skill in the art at the time the invention was made to use any type of mixer such as a pin mixer with a double helix pin arrangement to mix the mulch of Spittle as modified by Morgan depending on cost and how well one wishes to blend the mulch mixture together for his/her intended use.

5. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Spittle as modified by Morgan as applied to claim 1 above, and further in view of Decker (US 5,806,445). Spittle as modified by Morgan are silent about using sewage sludge in place of the paper fibers. Decker teaches in col. 2, lines 10-13, that sewage sludge is proven to be a very effective mulch media because it is plentiful, inexpensive, easy to handle and rich in nutrients. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute sewage sludge as taught by Decker for the paper fibers of Spittle as modified by Morgan in order to reduce cost and ease of handling.

Response to Arguments

6. Applicant's arguments filed 7/12/01 have been fully considered but they are not persuasive. Applicants argue that Spittle027 does not disclose an agglomerated /granulated mulch product. Spittle discloses the NPK and the paper fibers are formed into pellets, cooled, hardened and dried for shipping and application purposes (see col. 3, lines 22-27). This is agglomerated because, according to the Microsoft Bookshelf Basic Dictionary, the definition of agglomerated is to form into a rounded mass or

jumbled mass which the pellets of Spittle are agglomerated for shipping and application purposes. In addition, the pellets are then "granulated" into flakes (col. 3, line 28), thus indicates that the mulch product of Spittle is granulated mulch product.

Applicants argue that Spittle's process is not that of an agglomeration/granulation process. Although Applicants call their invention "an agglomeration/granulation method", the method only constitutes the steps of adding paper fibers, adding NPK and binding agent and drying the mixture which is what Spittle teaches. There is nothing special or distinguishable in Applicant's method to separate it from that of Spittle because Spittle clearly teaches all the required steps as claimed by Applicants to produce this "agglomeration/granulation" mulch product.

Applicants argue that it is not a matter of choice to use a pan pelletizer versus the one used in Spittle as modified by Morgan. Different types of pelletizer are very well known in the art and are old in the art; therefore, it is a matter of choice for a user to use the type of pelletizer suited for the intended use. One type of pelletizer may be better than another, so the user can choose the one that may be better for his/her intended use based on factors such as cost and which type produces the desired pellet size. Applicants didn't invent a new machine to produce the agglomerated/granulated mulch product as claimed because Applicants are employing an old and well known machine for making mulches which suites Applicants' intended use. The publications attached by Applicants further show the different types of machine for mulching and comparing them to one another so that a user can pick which type is best for his/her intended use.

Same explanation for Applicants argument of a pin mixer, a drum granulator and a paddle mixer.

Applicants argue that Decker teaches sewer sludge as a growing media to be added to the mulch and not making a mulch out of sewage sludge. Decker teaches a composted sewage sludge which is mulch. The word compost means mixture of decaying organic matter, as from leaves and manure, used to improve soil structure and provide nutrients (according to the Microsoft Bookshelf Basic Dictionary) which is what a mulch is. It may be mixed in with the soil to produce a growing media but separating from the soil, it is a mulch. In addition, mulches are known to be mixed with soil and not just applied to the surface of the soil only.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

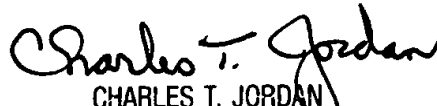
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3643

8. Applicants have attached publication in the response filed on 7/21/01 but did not submit form PTO-1449 with the publication information thereon for the Examiner to consider. Therefore, if Applicants wish the Examiner to consider the publication, Applicants have to submit form PTO-1449.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 8:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. The fax number of the Art Unit is (703)-305-3597. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

Son T. Nguyen, *STN*
Patent Examiner, GAU 3643
September 10, 2001


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